IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

CIVIL TRANSFER APPLICATION NO. 21 OF 2004

Rajendra Prasad Sethi .....Applicant.

Versus

Smt. Sushma Sethi .....Respondents.

Hon'ble Rajesh Tandon, J.

Heard Sri Anurag Bisaria and Menka Tripathi, counsel for the applicant in the transfer application.

Briefly stated, the proceeding under Section 125 of the Code of Criminal Procedure was initiated at the instance of Smt. Sushma Sethi before the Family Court Judge at Haridwar. On 18th December, 2003, the Family Court, Haridwar passed the order granting interim maintenance at the rate of Rs. 2000/- per month to the respondent Smt. Sushma Sethi. Against the said order, a Criminal Revision No. 20 of 2004 was preferred before the High Court of Uttaranchal at Nainital under Section 19 (a) of the Family Courts Act. The revision was heard by his Lordship Hon'ble Mr. Justice Irshad Hussain. After hearing the case on merits, his Lordship has confirmed the order of the Family Court, the observations made by the High Court are quoted below:-

"3. *It is not in dispute that the wife is residing separately for the last one year. There is nothing on record to indicate that she has any source of income and therefore, she being unable to maintain herself is entitled to get interim maintenance till the disposal of the petitioner under Section 125 of the Code of Criminal Procedure on merit. The learned*

Principal Judge, Family Court has granted the interim maintenance at the above rate which according to the learned counsel for the revisionist is excessive. It is submitted that the revisionist husband is doing agency work with the bank and he earns about 20,000/- per year from his engagement. On the other hand the contention of the wife was that the revisionist is also carrying a shop of generators and has sufficient income but is not providing her adequate maintenance despite the requests and demands. On behalf of the revisionist a certificate of commission paid by the Syndicate Bank was filed. It shows that a sum of Rs. 19,876/- was paid as commission in a financial year. This certificate also does not indicate that the revisionist was full time commission agent. He was free to engage himself in any activity and occupation and considering this at this stage it is difficult to disbelieve the claim of the respondent-wife that the revisionist is not carrying the agency work on full time basis and that he is also engaged in his above generator set business. Considering this the amount of Rs. 2000/- as interim maintenance does not appear to be exorbitant."

It has come on the record that the am0unt which was awarded under Section 125 of the Code of Criminal Procedure has not been paid to the respondent, hence the recovery proceedings were started against the petitioner. On 11th August, 2004, the Family Court Judge, Haridwar has passed the order that only a sum of Rs. 6,500/- has been paid and remaining amount of Rs. 7,500/- has not been paid to the respondent in pursuance of the orders passed by the Family Court on 18th December, 2003 as well as confirmed in the revision on 17th May, 2004.

By the present transfer application, the applicant has prayed for transferring the case to any other district. The order of interim maintenance under Section 125 of the Code of Criminal Procedure has already attained the finality by the order dated 17th May, 2004, therefore, there is no occasion to consider that the Presiding Officer in any way keeps any prejudice with the applicant so as to transfer the case. I do not find any apprehension from the Presiding Officer at Haridwar as he has already passed the order in compliance with the order passed in the proceedings under Section 125 Cr.P.C., which has already been upheld by the High Court.

In case, the petitioner deposits the entire amount due against him in proceedings under Section 125 of the Code of Criminal Procedure by 15th November, 2004, the case itself may be heard on merits by the Family Court Roorkee.

Transfer application is disposed of accordingly.

Copy of the order may be given within 48 hours.

(RAJESH TANDON, J.)

28.10.2004

P.S.R.